

REMARKS

Claims 1, 3, 4, 7, 8, 10-13 and 15-22 are currently pending and stand rejected.
Claims 2, 5, 6, 9 and 14 are canceled.

Claims 13 and 22 are amended herein. No new matter is presented as a result of these amendments. Indeed, support for these amendments may be found at least at page 5, lines 3-6, and in Claim 1, of the pending application (see also, e.g., Claim 2 as originally filed).

Claim 15 is amended herein. No new matter is presented as a result of this amendment. Indeed, support for this amendment may be found at least at page 6, lines 6-10, and in Claim 8, of the pending application.

Claim 20 is amended herein. No new matter is presented as a result of this amendment. Indeed, support for this amendment may be found at least at page 6, lines 12-15, and in Claim 10, of the pending application.

Claim 21 is amended herein. No new matter is presented as a result of this amendment. Indeed, support for this amendment may be found at least at page 6, lines 16-19, and in Claim 11, of the pending application.

Additionally, Claims 15, 16 and 18-21 are amended herein to depend from Claim 13. No new matter is presented as a result of these amendments.

Claim 23 is newly presented herein. No new matter is presented as a result of this new claim. Indeed, support for this new claim may be found at least at page 6, lines 20-23, and in Claim 12, of the pending application.

APPLICANT INITIATED INTERVIEW

It is noted that a teleconference was conducted between the Examiner and the undersigned on September 15, 2009, whereby the Examiner stated that independent Claim 1 might be in a condition for allowance. The Examiner further stated that he would consider this issue when responding to the instant response. The Applicant wishes to thank the Examiner for his feedback on this issue.

CLAIM REJECTIONS – 35 U.S.C. § 103(a)

The Office Action states that Claims 1, 3, 4, 7, 8 and 10-12 are rejected under 35 U.S.C. § 103(a) as being obvious in view of Kurtzman, Jr. (US 4,333,757; hereinafter “Kurtzman”). The Applicant has reviewed Kurtzman and respectfully submits that the embodiments as recited in Claims 1, 3, 4, 7, 8 and 10-12 are patentable over Kurtzman for at least the following rationale.

Independent Claim 1

Independent Claim 1 recites (emphasis added):

Method for the preparation of a biological fertilizer comprising:
subjecting whey to a first fermentation step;
subjecting the fermented whey to a filtration step;
adding a cellulose-rich carrier material to the filtered fermented whey at a ratio of fermented whey to carrier material of between 10 and 15; and

subjecting the mixture of cellulose-rich carrier material and filtered fermented whey to a second fermentation step.

The Applicant respectfully submits that Kurtzman fails to teach or suggest the embodiment of Claim 1.

The Applicant finds Kurtzman to teach:

In the first step of the process of the invention a liquid mixture containing a source of soluble carbon, nitrogen, and minerals necessary for microbial growth is prepared.

Id., column 3, lines 12-15 (emphasis added). The Applicant also finds Kurtzman to teach:

Following the fermentation, the liquid mixture is mixed with an amount of water sufficient to reduce the nitrogen content of the mixture

Id., column 3, lines 66-68 (emphasis added).

In view of the foregoing, the Applicant finds Kurtzman to teach a liquid mixture containing at least four different components (soluble carbon, nitrogen, minerals, and an amount of water). The Applicant also finds Kurtzman to teach:

As the source of soluble carbon one may use ... whey

Id., column 3, lines 15-24 (emphasis added).

However, assuming arguendo that Kurtzman teaches that the source of soluble carbon in the liquid mixture may be whey, the Applicant does not understand Kurtzman to teach that the sources of nitrogen and minerals are also whey. Furthermore, the

Applicant also does not find Kurtzman to teach, or even suggest, that the liquid mixture, once mixed with the amount of water following fermentation, is made exclusively of whey and no other component.

To illustrate the importance of the foregoing teachings of Kurtzman, the Applicant respectfully points out that Kurtzman expressly teaches:

Next, the temperature of the liquid mixture is raised to about 65°-80° C. The hot fermented liquid is contacted with dry cellulosic material in the proportion of approximately 3-10 parts of liquid per 1 part of cellulosic material.

Id., column 4, lines 8-12 (emphasis added). However, assuming arguendo that Kurtzman suggests a ratio of approximately 10 parts of the hot fermented liquid per 1 part of cellulosic material (wherein, as explained above, the fermented liquid mixture is not made exclusively of whey) the Applicant does not find Kurtzman to teach, or even suggest:

adding a cellulose-rich carrier material to the filtered fermented whey at a ratio of fermented whey to carrier material of between 10 and 15;

as claimed (emphasis added), at least because, as explained above, the Applicant does not find that the liquid mixture, as taught by Kurtzman, is made exclusively of whey and no other component, such that a person having ordinary skill in the art would understand Kurtzman as teaching the claimed proportions.

Indeed, the Applicant respectfully points out that Kurtzman does not specify what percentage of the hot fermented liquid is whey. Therefore, the Applicant respectfully suggests that Kurtzman fails to teach or suggest the claimed ratio.

It is noted that, during the teleconference conducted on September 15, 2009, the Examiner seemed to agree with the foregoing rationale.

For at least the foregoing rationale, the Applicant respectfully submits that Claim 1 is not obvious in view of Kurtzman under 35 U.S.C. § 103(a). As such, the Applicant respectfully requests withdrawal of the rejection of Claim 1 under 35 U.S.C. § 103(a), as well as allowance of Claim 1.

Dependent Claims 3, 4, 7, 8 and 10-12

With respect to Claims 3, 4, 7, 8 and 10-12, the Applicant respectfully points out that Claims 3, 4, 7, 8 and 10-12 depend from independent Claim 1, and recite further features. Therefore, the Applicant respectfully submits that Claims 3, 4, 7, 8 and 10-12 are thus in a condition for allowance at least because of their dependency on Claim 1. As such, the Applicant respectfully requests withdrawal of the rejections of Claims 3, 4, 7, 8 and 10-12 under 35 U.S.C. § 103(a), as well as allowance of Claims 3, 4, 7, 8 and 10-12.

CLAIM REJECTIONS – 35 U.S.C. §§ 102(b), 103(a)

Kurtzman

The Office Action states that Claims 13 and 15-22 are rejected under 35 U.S.C. § 102(b) as being anticipated by, or alternatively under 35 U.S.C. § 103(a) as being obvious in view of, Kurtzman. The Applicant has reviewed Kurtzman and respectfully

submits that the embodiments as recited in Claims 13 and 15-22 are patentable over Kurtzman for at least the following rationale.

i. Independent Claims 13 and 22

Independent Claim 13, and similarly independent Claim 22, as amended, recite (emphasis added):

Biological fertilizer comprising a cellulose-rich carrier material and a filtered fermented whey at a ratio of fermented whey to carrier material of between 10 and 15.

The Applicant respectfully submits that Kurtzman fails to teach or suggest the embodiments of independent Claims 13 and 22 for at least the same rationale presented with respect to independent Claim 1 (see above) because the Applicant does not find Kurtzman to teach, or even suggest:

Biological fertilizer comprising a cellulose-rich carrier material and a filtered fermented whey at a ratio of fermented whey to carrier material of between 10 and 15[.]

as claimed (emphasis added).

For at least the foregoing rationale, the Applicant respectfully submits that Claims 13 and 22 are not anticipated by Kurtzman under 35 U.S.C. § 102(b) or obvious in view of Kurtzman under 35 U.S.C. § 103(a). As such, the Applicant respectfully requests withdrawal of the rejections of Claims 13 and 22 under 35 U.S.C. §§ 102(b) and 103(a), as well as allowance of Claims 13 and 22.

ii. Dependent Claims 15-21

With respect to Claims 15-21, the Applicant respectfully points out that Claims 15-21 depend from independent Claim 13, and recite further features. Therefore, the Applicant respectfully submits that Claims 15-21 are thus in a condition for allowance at least because of their dependency on Claim 13. As such, the Applicant respectfully requests withdrawal of the rejections of Claims 15-21 under 35 U.S.C. §§ 102(b) and 103(a), as well as allowance of Claims 15-21.

Branconnier

The Office Action states that Claims 13 and 15-22 are rejected under 35 U.S.C. § 102(b) as being anticipated by, or alternatively under 35 U.S.C. § 103(a) as being obvious in view of, Branconnier et al. (US 5,810,903; hereinafter “Branconnier”). The Applicant has reviewed Branconnier and respectfully submits that the embodiments as recited in Claims 13 and 15-22 are patentable over Branconnier for at least the following rationale.

i. Independent Claims 13 and 22

Independent Claim 13, and similarly independent Claim 22, as amended, recite (emphasis added):

Biological fertilizer comprising a cellulose-rich carrier material and a filtered fermented whey at a ratio of fermented whey to carrier material of between 10 and 15.

The Applicant respectfully submits that Branconnier fails to teach or suggest the embodiments of independent Claims 13 and 22.

In particular, the Applicant finds Branconnier to teach a "[p]rocess for thermophilic aerobic fermentation of organic waste". See Title of Branconnier. However, the Applicant does not find the "[p]rocess for thermophilic aerobic fermentation of organic waste" of Branconnier to teach, or even suggest:

Biological fertilizer comprising a cellulose-rich carrier material and a filtered fermented whey at a ratio of fermented whey to carrier material of between 10 and 15[,]

as claimed (emphasis added).

For at least the foregoing rationale, the Applicant respectfully submits that Claims 13 and 22 are not anticipated by Branconnier under 35 U.S.C. § 102(b) or obvious in view of Branconnier under 35 U.S.C. § 103(a). As such, the Applicant respectfully requests withdrawal of the rejections of Claims 13 and 22 under 35 U.S.C. §§ 102(b) and 103(a), as well as allowance of Claims 13 and 22.

ii. Dependent Claims 15-21

With respect to Claims 15-21, the Applicant respectfully points out that Claims 15-21 depend from independent Claim 13, and recite further features. Therefore, the Applicant respectfully submits that Claims 15-21 are thus in a condition for allowance at least because of their dependency on Claim 13. As such, the Applicant respectfully requests withdrawal of the rejections of Claims 15-21 under 35 U.S.C. §§ 102(b) and 103(a), as well as allowance of Claims 15-21.

Stoney, Peer and Holt

The Office Action states that Claims 13 and 15-22 are rejected under 35 U.S.C. § 102(b) as being anticipated by, or alternatively under 35 U.S.C. § 103(a) as being obvious in view of, Stoney (GB 2,294,257), Peer (UK 1,500,326) or Holt et al. (US 3,914,438; hereinafter "Holt"). The Applicant has reviewed this art and respectfully submits that the embodiments as recited in Claims 13 and 15-22 are patentable over such art for at least the following rationale.

i. Independent Claims 13 and 22

Independent Claim 13, and similarly independent Claim 22, as amended, recite (emphasis added):

Biological fertilizer comprising a cellulose-rich carrier material and a filtered fermented whey at a ratio of fermented whey to carrier material of between 10 and 15.

The Applicant respectfully submits that Stoney, Peer and Holt, alone or in combination, fail to teach or suggest the embodiments of independent Claims 13 and 22.

With respect to Stoney, the Applicant finds Stoney to teach a "[g]rowing media". See Title of Stoney. With respect to Peer, the Applicant finds Peer to teach a "[n]utrient composition for plants and animals". See Title of Peer. With respect to Holt, the Applicant finds Holt to teach a "[n]utrient composition and method for making same". See Title of Holt. However, the Applicant does not find the "[g]rowing media" of Stoney, the "[n]utrient composition for plants and animals" of Peer, or the "[n]utrient composition and method for making same" of Holt to teach, or even suggest:

Biological fertilizer comprising a cellulose-rich carrier material and a filtered fermented whey at a ratio of fermented whey to carrier material of between 10 and 15[,]

as claimed (emphasis added).

For at least the foregoing rationale, the Applicant respectfully submits that Claims 13 and 22 are not anticipated by Stoney, Peer and Holt under 35 U.S.C. § 102(b) or obvious in view of Stoney, Peer and Holt under 35 U.S.C. § 103(a). As such, the Applicant respectfully requests withdrawal of the rejections of Claims 13 and 22 under 35 U.S.C. §§ 102(b) and 103(a), as well as allowance of Claims 13 and 22.

ii. Dependent Claims 15-21

With respect to Claims 15-21, the Applicant respectfully points out that Claims 15-21 depend from independent Claim 13, and recite further features. Therefore, the Applicant respectfully submits that Claims 15-21 are thus in a condition for allowance at least because of their dependency on Claim 13. As such, the Applicant respectfully requests withdrawal of the rejections of Claims 15-21 under 35 U.S.C. §§ 102(b) and 103(a), as well as allowance of Claims 15-21.

PATENTABILITY OF NEW CLAIM 23

With respect to new Claim 23, the Applicant respectfully points out that Claim 23 depends from independent Claim 13, and recites further features. Therefore, the Applicant respectfully submits that Claim 23 is thus in a condition for allowance at least

because of its dependency on Claim 13. As such, the Applicant respectfully requests allowance of Claim 23.

CONCLUSION

In light of the above-listed remarks, reconsideration of the rejected claims is requested. Based on the amendments and arguments presented above, it is respectfully submitted that Claims 1, 3, 4, 7, 8, 10-13 and 15-22 overcome the rejections of record. Therefore, allowance of Claims 1, 3, 4, 7, 8, 10-13 and 15-22 is respectfully solicited.

Additionally, based on the arguments presented above, it is respectfully submitted that new Claim 23 overcomes the rejections of record. Therefore, allowance of Claim 23 is respectfully solicited.

Should the Examiner have a question regarding the instant response, the Applicant invites the Examiner to contact the Applicant's undersigned representative at the below-listed telephone number.

The foregoing notwithstanding, kindly note that the Commissioner is hereby authorized to charge any additional fees which may be required or credit overpayment to Deposit Account No. 12-0415. In particular, if this response is not timely filed, then the Commissioner is hereby authorized to treat this response as including a petition to extend the time period for response, pursuant to 37 CFR 1.136(a), said petition requesting an extension of time of the number of months available to allow this response to be timely filed, and the petition fee due in connection therewith may be charged to Deposit Account No. 12-0415.

Respectfully submitted,

LADAS & PARRY LLP

Date: September 22, 2009

By: /Jerry A. Crandall/

Jerry A. Crandall
Attorney for Applicant
Reg. No. 56,765

5670 WILSHIRE BOULEVARD,
SUITE 2100
LOS ANGELES, CALIFORNIA 90036
(323) 934-2300

I hereby certify that this document is being transmitted to
the United States Patent and Trademark Office via
electronic filing.

September 22, 2009

(Date of Transmission)

Lonnie Louie

(Name of Person Transmitting)

/Lonnie Louie/

(Signature)